



November 16, 2000

Ms. Lamis A. Safa
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2000-4433

Dear Ms. Safa:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 141333.

The City of Houston Police Department (the "department") received two requests for a variety of information related to a specified automobile accident involving a department officer. You state that you will provide the requestors with the public release portion of the offense report, but claim that the requested information is excepted from disclosure under sections 552.103, 552.108, and 552.130 of the Government Code and under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." In Open Records Decision No. 562 (1990), this office discussed the confidentiality of personnel file information maintained by police and fire departments in cities that have adopted the fire fighters' and police officers' civil service law in accordance with the provisions of chapter 143 of the Local Government Code. Section 143.089 of the Local Government Code provides for the creation of two types of personnel files for police officers: one that is maintained by the city's civil service director and the other by the city police department.

Section 143.089(a) provides for the maintenance of the police officer's civil service file as follows:

(a) The director or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:

(1) a commendation, congratulation, or honor bestowed on the fire fighter or police officer by a member of the public or by the

employing department for an action, duty, or activity that relates to the person's official duties;

(2) any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter; and

(3) the periodic evaluation of the fire fighter or police officer by a supervisor.

(b) A letter, memorandum or document relating to alleged misconduct by the fire fighter or police officer may not be placed in the person's personnel file if the employing department determines that there is insufficient evidence to substantiate the charge of misconduct.

(c) A letter, memorandum, or document relating to disciplinary action taken against the fire fighter or police officer or to alleged misconduct by the fire fighter or police officer that is placed in the person's personnel file as provided by subsection (a)(2) shall be removed from the employee's file if the commission finds that:

(1) the disciplinary action was taken without just cause; or

(2) the charge of misconduct was not supported by sufficient evidence.

Information that section 143.089(b) and (c) prohibit from being placed in the civil service file may be maintained in a police department's internal file, as provided in section 143.089(g):

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director [of the civil-service commission] or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Subsection (g) authorizes city police and fire departments to maintain for their own use a file on a police officer or fire fighter that is separate from the file maintained by the city civil service commission. "The department may not release any information contained in the department file to any agency or person," but instead "the department shall refer to the director [of the civil-service commission] or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file." Local Gov't Code § 143.089(g):

see *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 952 (Tex. App.--Austin 1993, writ denied).

The court in *City of San Antonio* addressed the availability of information that is contained in the department's internal file pursuant to section 143.089(g). The court determined that section 143.089(g) makes confidential any records kept in a department's internal file. *City of San Antonio*, 851 S.W.2d at 946 (in construing section 143.089 the court found general legislative policy that allegations of misconduct against police officers and fire fighters not be subject to compelled disclosure unless they have been substantiated and resulted in disciplinary action). Therefore, "any letter, memorandum, or document relating to" one of the four disciplinary actions listed in subchapter D of chapter 143 must be placed in the personnel files maintained by the civil service commission under section 143.089(a). Local Gov't Code § 143.089(a). Those disciplinary actions are suspension, demotion, uncompensated duty, and dismissal. You state that the information responsive to this request is "kept solely in the departmental file for department use" and that the documents "are not included in the public civil service personnel file of the employee" because the investigation has not concluded, so "there has not yet been any disciplinary action taken against the police officer." You therefore contend that the requested information is made confidential under section 143.089(g) and thus may not be released to the requestor. As to the information contained only in records of the Internal Affairs Unit of the Office of Inspector General, we concur. The department must withhold most of the submitted information under section 552.101 in conjunction with section 143.089(g) of the Local Government Code.

However, we note that some of the submitted information is contained in department offense report and investigation records separate and apart from those of the internal affairs investigation. The department may not engraft section 143.089's confidentiality to other records that exist independently of the internal affairs investigation. One such included item is a peace officer's accident report that appears to have been prepared pursuant to chapter 550 of the Transportation Code. See Transp. Code § 550.064 (officer's accident report). Access to an accident report is governed by law outside the Public Information Act. The Seventy-fourth Legislature amended section 47 of article 6701d, Vernon's Texas Civil Statutes, to provide for the release of an accident report to a person who provides two of the following three items of information: (1) the date of the accident, (2) the name of any person involved in the accident, and (3) the specific location of the accident. See Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Gen. Laws 4413, 4414. In other legislation, the Seventy-fourth Legislature also repealed and codified article 6701d as section 550.065 of the Transportation Code without substantive change. See Act of May 1, 1995, 74th Leg., R.S., ch. 165, §§ 24, 25, 1995 Tex. Gen. Laws 1025, 1870.¹ In section 13 of Senate Bill No. 1069, the Seventy-fifth Legislature amended section 550.065 of the Transportation Code to provide for release of accident reports under specific circumstances. See Act of May 29, 1997, 75th Leg., R.S., ch. 1187, § 13, 1997 Tex. Gen. Laws 4575, 4582-83 (current version at Transp. Code

¹Because the repeal of a statute by a code does not affect an amendment of that statute by the same legislature that enacted the code, the amendment of section 47 of article 6701d, V.T.C.S., is preserved and given effect as part of the code provision. See Gov't Code § 311.031(c).

§ 550.065). That same legislation also repealed section 47 of article 6701d, V.T.C.S. *See id.*, § 16(b), 1997 Tex. Gen. Laws 4575, 4583. However, a Travis County district court has issued a permanent injunction precluding the enforcement of the amendment of section 550.065 of the Transportation Code that was enacted by section 13 of Senate Bill No. 1069. *See Texas Daily Newspaper Ass'n. v. Cornyn*, No. 97-08930 (345th Dist. Ct., Travis County, Tex., April 26, 2000). The district court has determined that the law in effect prior to the passage of Senate Bill No. 1069 now governs and remains unaffected by the permanent injunction. The law in effect prior to the passage of Senate Bill No. 1069 was section 47 of article 6701d, V.T.C.S.²

Subsection (a) of section 47 provides that “[e]xcept as provided by Subsection (b) of this section, all accident reports . . . [are] privileged and for the confidential use of the Department [of Public Safety] and agencies . . . having use for the records for accident prevention purposes.” V.T.C.S. art. 6701d, § 47(a). Subsection (b) of section 47 provides in relevant part:

(1) The Department or a law enforcement agency employing a peace officer who made an accident report is required to release a copy of the report on request to:

. . .

(D) a person who provides the Department or the law enforcement agency with two or more of the following:

- (i) the date of the accident;
- (ii) the name of any person involved in the accident;

or

- (iii) the specific location of the accident[.]

²A separate act of the Seventy-fifth Legislature also amended section 550.065 of the Transportation Code to conform to section 47 of article 6701d, as amended by the Seventy-fourth Legislature, and repealed article 6701d. *See* Act of May 8, 1997, 75th Leg., R.S., ch. 165, § 30.125, 1997 Tex. Gen. Laws 327, 648-49 (enacting Senate Bill No. 898). Although the Seventy-fifth Legislature enacted Senate Bill No. 898 prior to the passage of Senate Bill No. 1069, Senate Bill No. 898 was not made effective until September 1, 1997. *See id.*, § 33.01, 1997 Tex. Gen. Laws 327, 712. Further, Senate Bill No. 1069 expressly provides that to the extent of any conflict, Senate Bill No. 1069 prevails over another act of the Seventy-fifth Legislature. *See* Act of May 29, 1997, 75th Leg., R.S., ch. 1187, § 16(c), 1997 Tex. Gen. Laws 4575, 4583. If irreconcilable amendments are enacted by the same session of the same legislature, the latest in time prevails. *See* Gov't Code § 311.025(b). Thus, because Senate Bill No. 898 never became effective, and later amendments prevail, we conclude that section 47 of article 6701d, V.T.C.S., was the law in effect prior to the passage of Senate Bill No. 1069 regarding the availability of accident report information, rather than section 550.065 of the Transportation Code as amended by Senate Bill No. 898.

V.T.C.S. art. 6701d, § 47(b)(1)(D); *see* Act of May 27, 1995, 74th Leg., R.S., ch. 894.³ Thus, subsection (b) of section 47 provides that a peace officer's accident report is subject to release only by the Department of Public Safety or "a law enforcement agency employing a peace officer who made an accident report[.]" Otherwise, section 47(a) makes an accident report confidential. In this case, the accident report was prepared by an officer of the department. The requestor has provided the department with two items of information specified by section 47(b)(1)(D). Therefore, the department must release the accident report in its entirety to the requestor.

Exhibits 2, 3, and 4 also contain other information that exists separate and apart from those of the internal affairs investigation. The offense report, accident investigation documents, and photographs are part of an accident investigation independent of the internal affairs investigation. As a part of the accident investigation, those records are not protected by section 143.089. However, you also assert section 552.108. Section 552.108 of the Government Code, the "law enforcement exception," provides in relevant part that "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if ... release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that claims an exception to public disclosure under section 552.108 must reasonably explain, if the responsive information does not do so on its face, how and why section 552.108 is applicable. *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). In this instance, you inform us that the submitted information pertains to an ongoing investigation. Based on your representations and our review of the submitted information, we conclude that you have demonstrated that release of the information that you seek to withhold would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 184-85 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). We therefore conclude that section 552.108(a)(1) is applicable to the submitted information.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d at 177. You state that you will provide the requestors with the public release portion of the offense report. Thus, with the exception of the basic front page offense and arrest information, we find that the department may withhold the remaining information contained in Exhibits 2, 3, and 4 under section 552.108(a)(1).

³We note that the text of amended section 47 of article 6701d, V.T.C.S., is not found either in the Vernon's Revised Civil Statutes or in the Transportation Code. It is published, however, in the 1995 General and Special Laws of the Seventy-fourth Legislature at chapter 894, section 1.

In summary, the department must release the peace officer's accident report and basic information, but may withhold the remaining submitted information contained in Exhibits 2, 3, and 4 under section 552.108(a)(1). The department must withhold Exhibit 5 under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. We note that the department has the discretion to release all or part of the remaining information contained in Exhibits 2, 3, and 4 that is not otherwise confidential by law. Gov't Code § 552.007. Because we find sections 552.101 and 552.108 dispositive, we need not address your section 552.103 assertion.⁴

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

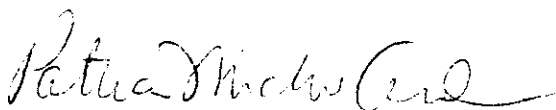
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

⁴Generally, basic information may not be withheld from public disclosure under section 552.103. Open Records Decision No. 362 (1983).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/seg

Ref: ID# 141333

Encl. Submitted documents

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